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No. 95-345; 95-346

In The
Supreme Court of the United States

October Term, 1995

No. 95-345
UNITED STATES OF AMERICA, *Petitioner,*
vs.
GUY JEROME URSERY, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 95-346
UNITED STATES OF AMERICA, *Petitioner,*
vs.
$405,089.23, ET AL., *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION TO FILE BRIEF AND BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF THE PETITIONER.

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MOTION OF AMICI CURIAE TO FILE BRIEF AND BRIEF.

This motion and brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by Counsel for the Petitioner. Consent to file has not been

received from Counsel for the Respondents. The letter of Petitioner has been filed with the Clerk of this Court, as required by the Rules.

Come now Americans for Effective Law Enforcement, Inc., the International Association of Chiefs of Police, Inc., and the National Sheriffs' Association, and move this Court for leave to file the attached brief as *amici curiae,* and declare as follows:

1. *Identity and Interest of Amici Curiae*. The *amici curiae* are described as follows:

Americans for Effective Law Enforcement, Inc. (AELE), is a national not-for-profit educational organization that conducts legal research and provides law bulletins and continuing legal education programs for law enforcement administrators and their counsel.

AELE has appeared before this Court as *amicus curiae* more than one hundred times and many times in other federal and state appellate courts. Its *amicus* program seeks to establish a body of law that enhances the effectiveness of law enforcement agencies, in a constitutional manner. AELE typically appears in support of a government agency or official. However, when the facts so warrant, AELE will decline to appear in a case or will support the opposition (as it did in *Hudson v. McMillian,* 112 S. Ct. 995 (1992)).

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 82 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens. The IACP has a Narcotics and Dangerous Drugs Committee, comprised of 30 association members who represent federal,

state, and local law enforcement agencies concerned with drug interdiction activities. The responsibility of this committee is to ensure cooperation between agencies at these various levels, as well as internationally.

The IACP, through its membership and staff, has assisted the Department of Justice (DOJ) over the last two years with the development of a teaching curriculum to instruct state and local law enforcement officers in the permissible and proper use of the federal asset forfeiture statutes as a tool in combating illegal drug activities. The IACP is also a member of the Working Group on Asset Forfeiture, established by the Deputy Attorney General of the United States. The Working Group has been investigating proposed reforms to the federal asset forfeiture legislation and the DOJ's Administrative Guidelines.

The Association has consistently advocated that asset forfeiture is the single most effective tool available to law enforcement in the national effort to disrupt and then stop illegal drug activities. Since 1987, the IACP has endorsed asset forfeiture programs at the state and federal level, and has called upon the various governmental units to enact such legislation to combat illicit drug trafficking.

The IACP believes that criminal enterprises, as a matter of law, have no legal claim to the proceeds of their illegal activities, and to redirect those captured proceeds or instrumentalities is, therefore, not an additional punishment or deprivation of legally owned property, and wishes to explain the basis for its beliefs with the accompanying *amici curiae* brief.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. Along with its interest in the effective admin-

istration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

2. *Desirability of an Amici Curiae Brief.* *Amici* are professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of administering procedures involving forfeiture actions; and (2) police legal advisors who are called upon to advise law enforcement officers and administrators in connection with such matters.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel at the state and national level—we are particularly aware of the impact of the ruling of the courts below. We respectfully ask this Court to consider this information in reaching its decision in these consolidated cases.

3. *Reasons for Believing that Existing Briefs May Not Present All Issues.* AELE, IACP, and NSA are state and national associations, and our perspective is broad. This brief concentrates on policy issues, including the importance of asset forfeiture proceedings in effectively dealing with the problem of illicit drugs in our various jurisdictions. Although petitioner is clearly represented by capable and diligent counsel, no single party can completely develop all relevant views of such issues as these.

4. *Avoidance of Duplication.* Counsel for *amici curiae* has reviewed the facts of this case and has conferred with counsel for petitioner in an effort to avoid unnecessary duplication. It is believed that this brief presents vital policy issues that are not otherwise raised.

5. *Consent of Parties or Requests Therefor.* Counsel has requested consent of the parties. The consent of Petitioner has been received and filed with the Clerk of this Court. This motion is necessary because the Respondents have not granted consent to *amici*.

For these reasons, the *amici curiae* request that they be granted leave to file the attached *amici curiae* brief.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*

See Section on Identity and Interest of *Amici Curiae, supra.*

ARGUMENT

THE DOUBLE JEOPARDY CLAUSE DOES NOT PROHIBIT A CRIMINAL PROSECUTION BECAUSE THE GOVERNMENT HAS OBTAINED A CONSENT JUDGMENT IN A RELATED CIVIL ACTION. THE DOUBLE JEOPARDY CLAUSE DOES NOT PROHIBIT A CIVIL FORFEITURE PROCEEDING IN A CASE IN WHICH THE PROPERTY OWNERS ALSO ARE PROSECUTED FOR NARCOTICS AND MONEY LAUNDERING OFFENSES.

The courts below, *United States v. Ursery*, 59 F.3d 568 (6th Cir. 1995) and *United States v. $405,089.23, Et Al*, 33 F.3d 1210 (9th Cir. 1995), ruled that the Fifth Amendment Double Jeopardy Clause bars prosecutions of drug defendants whose property was subjected to civil forfeiture actions. In effect, these courts have held that civil forfeiture of property used to facilitate criminal activities, or that constitute the proceeds of criminal activity, necessarily constitutes "punishment" under the Double Jeopardy Clause. In so holding the courts departed from this Court's preference expressed in *United States v. Halper*, 490 U.S. 435 (1989), for a case-by-case approach to the issue of whether a particular civil sanction inflicts punishment.

These decisions will have enormous practical consequences for law enforcement in America. A categorical conclusion that all civil forfeitures constitute punishment will have the effect of completely barring a later criminal prosecution of the owner, even if the particular prior civil forfeiture were fairly characterized as substantially remedial within the purview of *Austin v. United States*, 113 S. Ct. 2801 (1993). It will dramatically alter the common practice of pursuing both forfeiture of offending

property as a civil remedy and punishment of its owner as a criminal remedy. In effect, it will end forfeiture of drug proceeds in America as it presently exists and adversely impact the efforts of prosecutors to file criminal charges. *Amici* submit that a proper application of double jeopardy principles does not support such a rule.

Prosecutors and law enforcement administrators will justifiably be reluctant to commence, prosecute, or settle civil forfeiture actions if by so doing it necessarily precludes the prosecution of serious criminal offenses. The decisions below will also engender literally thousands of motions to dismiss indictments, post-trial motions for relief, and collateral attacks on existing judgments, and will add substantial delay to the adjudication of defendants' guilt and require burdensome post-trial litigation over what should be final criminal convictions.

Amici know from our experience as professional organizations representing law enforcement authorities at all levels below the federal government, that such a result will not only impair our effort to stem the tide of the drug epidemic in America, but that it will also have a devastating financial impact on law enforcement at *all* levels of government.

The Office of the United States Attorney General has reported that revenue produced from forfeitures is "an invaluable source of funding" that is reinvested into federal, state, local and international law enforcement efforts to fight the war against crime. "In an austere budget environment," the Office notes, "the [federal] Assets Forfeiture Fund has provided law enforcement with critical resources to fight the war against crime." *Annual Report of the Dept. of Justice Asset Forfeiture Program*, F.Y. 1993 at 17-18.

Since 1985, more than $3.8 billion in illicit cash and proceeds from the sale of property have been deposited into the Fund. Almost $1.4 billion has been shared with state and local

law enforcement efforts. The Justice Department also shares drug seizure funds with foreign countries that assist United States law enforcement activities. *Annual Report of the Dept. of Justice Asset Forfeiture Program,* F.Y. 1994 at 18-20. This sharing arrangement is vital to securing much-needed cooperation of foreign governments.

More importantly, unless the assets of a drug trafficking operation are seized, those persons who are convicted will be replaced continually, as needed. As noted in one case, "...forfeitures are not punishment for criminal activity, but rather an exercise of the police power of a state to confiscate property that was instrumental in a crime so as to prevent the continuance of unlawful acts." *United States v. Jenison,* 484 F.Supp. 747, 753 (D.R.I. 1980).

Amici strongly believe that the presently utilized forfeiture procedures and programs fully protect the legitimate property interests of innocent parties; nor would we support a program that failed to do so. Moreover, present state and federal procedures and programs do not involve an abuse of power. To the contrary, they scrupulously safeguard the legitimate interests of the innocent. We respectfully urge, therefore, that this Court maintain the settled constitutional principles upon this subject. It should not foreclose what undoubtedly constitutes the most effective effort yet devised to diminish the epidemic of illicit dangerous drugs in our communities.

CONCLUSION

Amici urge this Court to affirm the decision of the courts below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

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